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DATE:	November 12, 2008		No. of Pages (Inclu	DDING THIS PAGE): 7	
For:	David Bucci, Petition Exam	miner		ORIGINAL WILL FOLLOW BY:	
COMPANY:	United States Patent and	Trademark Offi	ce	OVERNIGHT MAIL COURIER	
Fax No.:	571-273-8300	PHONE:		WILL NOT FOLLOW	
FROM:	Michael L. Smith				
* 1	Please let us know by ph	none or fax if you o	o not receive any of th	nese pages.	
COMMENTS:					
Re: U.S.	. Patent Application No. 10/673,2	96			
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### NOTICE

The information contained in this fax transmission is intended only for the individual to whom or entity to which it is addressed. It may also contain privileged, confidential, attorney work product or trade secret information which is protected by law. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering the message to the addressee, the reader is hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the address above via the U.S. Postal Service. We will reimburse you for any reasonable expense (including postage) for the return of the original message.



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November 12, 2008

VIA FACSIMILE: 571-273-8300

Mr. David Bucci Petitions Examiner Office of Petitions P.O. Box 1450 Alexandria, Virginia 22314

Re:

U.S. Patent Application No.: 10/673,296

Mittlestein, et al.

In the name of Bausch & Lomb Incorporated

Our Ref: P03115

Dear Mr. Bucci:

This is in response to the Decision Refusing Status Under 37 CFR 1.47(a) mailed on 1 October 2008 by the Office of Petitions concerning application 10/673,296. I believe a failure in the Patent Office's procedures has occurred and resulted in the premature issuance of application 10/673,296 as US Patent 7,445,436. Somehow, the application continued to issuance even though the Office of Petitions was working with me to obtain a properly signed declaration from one joint inventor.

A petition under 1.47(a) was dismissed and a two month period, starting from the 1 October 2008 mailing date, was set to correct a deficiency set forth in the Decision. I set about curing the deficiency by sending, via FedEx, a new declaration to joint inventor Robert Schauer, on 24 October 2008 listing all the inventors. The signed declaration was received back from Mr. Schauer on 10 November 2008, and is attached to this letter.

I was preparing to forward the signed declaration to the Office of Petitions, when I became aware that US Patent 7,445,436 had issued before a proper declaration was filed.

Harness, Dickey & Pierce, P.L.C. Attorneys and Counselors

Metropolitan:

Detroit, Mt St. Louis, MO Washington, DC

7700 Bonhomme, Suite 400, St. Louis, MO 63105

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I am requesting that the properly signed declaration attached to this letter be entered into the file of application 10/673,296 because, through no fault of mine or the applicant, the patent issued before a properly signed declaration was filed.

Respectfully submitted,

Michael L. Smith Reg. No. 35,685

MLS:csy

Attachment - Declaration and Power of Attorney

cc: John J. Doll, Commissioner of Patents
John J. Love, Deputy Commissioner for Patent Examination Policy
Peter Bertheaud, Examiner

PATENT

Attorney's Docket No. P03115 (6639-000035/US)

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COMBINED DECLARATION AND POWER OF ATTORNEY CENTRAL FAX CENTER

As a below-named inventor, I hereby declare that:

# TYPE OF DECLARATION

This declaration is	of the	following	type:
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- provisional
- $\mathbf{X}$ original
- design
- divisional
- continuation
- continuation-in-part (CIP)

# INVENTORSHIP IDENTIFICATION

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

### A PERISTALTIC PUMP WITH A MOVEABLE PUMP HEAD

which was filed on September 29, 2003, as United States Patent Application No. 10/673,296

# <u>ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR</u>

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose all information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, §1.56(a).

In compliance with this duty, there is attached an information disclosure statement. 37 CFR 1.97.

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# PRIORITY CLAIM (35 U.S.C. §119

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the same application(s) of which priority is claimed.

x no such applications have been filed.
 such applications have been filed as follows:

# PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN 12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. §119

Country	Application Number	Date of Filing (day, month, year)

# CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S) UNDER 35 U.S.C. 120

I hereby claim the benefit under Title 35, United States Code, §119 and/or §120 of any United States application(s) that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior applications(s) in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application(s) and the national filing date of this application.

Ī		Status (check one)	
U.S. Applications	U.S. Filing Date	Patented	Pending
1. 0/			
2. 0/			

I hereby claim the benefit under Title 35, United States Code §119(e) of any United States provisional application(s) listed below.

U.S. Applications	U.S. Filing Date
1.	
2.	·

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### **POWER OF ATTORNEY**

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

Michael L. Smith, Reg. No. 35,685 CUSTOMER NUMBER 23702

Send correspondence to:

Direct telephone calls to:

Michael L. Smith Bausch & Lomb Incorporated One Bausch & Lomb Place Rochester, NY 14604 Michael L. Smith (314) 446-7646

# **DECLARATION**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issued thereon.

# SIGNATURE(S)

Full name of first inventor: Michael Mittelstein			
Inventor's signature			
Date	Country of Citizenship: GERMANY		
Residence: 29412 Clipperway Laguna Niguel, California 92677 US	, ·		
Post Office Address Same as above			

Full name of second inventor: John T. Sorer	nsen
Inventor's signature	
Date	Country of Citizenship: US
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Post Office Address Same as above	
Full name of third inventor: Soheila Mirhas	hemi
Inventor's signature	
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Post Office Address Same as above	
Full name of fourth inventor: James Gerg	
Inventor's signature	
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Post Office Address Same as above	
Full name of fifth inventor: Robert Schauer	
Inventor's signature	lenave-
Date	Country of Citizenship: US
Residence: 15831 Bristol Circle Westminster, California 92683 US	
Post Office Address Same as above	